INDEX

	PAGE
Joint Stipulation of Counsel relative to Documents and Exhibits, etc.	1
Agreed Statement of Facts	2
Exhibit Libelant's "C-1"—Letter, Arthur J. Jotic to Merrill-Stevens Dry Dock Co., dated 5/12/49	7
Commissioner's Report	7
Exceptions of H. W. Findley, Claimant, to Commissioner's Report	14
Final Decree, entered 4/28/50	19
Notice of Appeal	25
Clerk's Certificate	27

On August 11, 1950 Stipulation was filed in the words and figures as follows:

STIPULATION.

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION. IN ADMIRALTY.

Nos. 789, 790, 794-M (Consolidated)

RED TOP SUPER MARKETS, INC., a Florida corporation,
Libelant,

versus

THE MOTOR VESSEL "QUEEN ANNE", and her engines, tackle, furniture, apparel and appurtenances, etc.

It is hereby stipulated by and between the proctors for the respective parties that the following documents and exhibits contain all the records, proceedings evidence and exhibits filed in the within cause which are to be included in the record on appeal:

Agreed Statement of Facts

Libelant's Exhibit C-1

Commissioner's Report, filed March 3, 1950

Exceptions to the Commissioner's Report, filed April 4, 1950.

Final Decree, entered April 28, 1950.

Notice of Appeal, filed May 15th, 1950.

It is further stipulated that the original records and exhibits will be present before the Court at the time of argument in the event the Court desires any information concerning anything contained therein, and that the Proctors for the respective parties may refer thereto at will in argument of the appeal.

JOHN P. BOOTH and
FRANK J. O'CONNOR,
Proctors for Claimant-Appellant.

By FRANK J. O'CONNOR,
PALLOT & TATHAM,
Proctors for Libelant and Interveners.

By THOMAS L. TATHAM,
WILLIAM F. PARKER,
(William F. Parker),
Proctor for Ukko Ahnger, Individually and as Trustee.

On August 11, 1950, AGREED STATEMENT OF FACTS was filed in the words and figures as follows:

(Title Omitted.)

The history of this case is contained in the following agreed statement of facts:

The M/V "Queen Anne" was libeled on the 17th day of June, 1949 by Red Top Super Markets, Inc., a Florida

corporation, for supplies alleged to have been furnished to said M/V (in Admiralty No. 789). Thereafter, on the 27th day of June, 1949 said M/V was libeled by Ukko Ahnger, individually and as Trustee, for wages claimed to be due himself and crew (in Admiralty No. 790). That, thereafter, S. Appel & Co., a New York corporation, libeled the said M/V on the first day of July, 1949 for supplies furnished the vessel (in Admiralty No. 794). Thereafter, both Hopkins-Carter Hardware Company, a Florida corporation, and Kenneth C. Braidman, doing business as Bert's French Cleaners, filed their intervening libels for supplies and services furnished to said vessel on the 19th day of July, 1949 (in Admiralty No. 794).

The owner of the M/V "Queen Anne", H. W. Findley, answered the above libels and intervening libels and filed his claim of ownership in each of said causes. All of the proceedings were regular; the vessel was duly arrested by appropriate process and subsequently the vessel was released to the owner upon his claim of ownership and upon his filing the stipulated bond. Upon motion, all of the above cases were consolidated under Admiralty No. 789 and no question is raised as to the form or sufficiency of the pleadings, and the proctors for the respective parties have stipulated that the full pleadings need not be printed for the purpose of this record.

All claims which are the subject of the libels and intervening libels were contracted for by one Hans G. Milton. The libelants and the intervening libelants claim that he was in command of the M/V "Queen Anne". The owner, H. W. Findley, contends that Hans G. Milton had no authority, either actual or apparent, to bind the vessel, and it is this dispute that gives rise to this litigation.

On or about April 25th, 1949, the vessel "Queen Anne" was sold at U. S. Marshal's sale in the City of Miami, Florida, to the said H. W. Findley, of 4 Class Street, Carnegie, Pennsylvania, and pursuant to such sale Chester Dishong, U. S. Marshal for the Southern District of Florida, executed a bill of sale for said vessel to the said H. W. Findley, dated May 2nd, 1949, it being the contention of the said H. W. Findley that at the said sale he was acting for himself and using his personal funds with which to purchase said M/V "Queen Anne" and that on and after the 2nd day of May, 1949, he was the sole owner of said vessel; that subsequent to the said Findley's purchase of said vessel he left the said vessel at Merrill-Stevens Dry Dock Company for the purpose of having certain repairs done and completed. That thereafter, on or about the 16th day of May, 1949, one Hans G. Milton contacted John P. Booth and Frank J. O'Connor, attorneys for the said H. W. Findley, in Miami, Florida, and represented to them that he had been negotiating with the owners of the M/V "Queen Anne" and inquired about the arrival of certain papers and instructions to said attorneys; that when said papers and instructions did not arrive, the said Milton requested permission to go aboard the said M/V "Queen Anne" for the purpose of taking an inventory pending the arrival of said papers and instructions in connection with such negotiations. Whereupon, the said Milton was given permission by Frank J. O'Connor, as attorney for the owner, to go aboard the M/V "Queen Anne" while in the custody of Merrill-Stevens Dry Dock Company, 1270 N. W. 11th Street, Miami, Florida, for the purpose of taking inventory and the said Milton did thereupon actually go aboard said vessel for the purpose of taking such an inventory during which time the repairs aforesaid were still in progress; and, after an employee of the staff of Merrill-Stevens Dry Dock Company, in whose custody the

vessel was, called on long distance and spoke with the owner's secretary, the said Milton was permitted to board said vessel. After the said Milton actually went aboard said vessel, he hired a crew and placed them on ship-board. That thereafter, on or about May 21st, 1949, the said Milton displayed to the said attorney, Frank J. O'Connor, a photostatic copy of a letter signed by one Artur J. Jotic (Libelants' Exhibit C-1) which purported to give him authority to go aboard said vessel in order to make the necessary arrangements for her departure from Miami as soon as the repairs aforesaid were completed. That thereafter, on May 30th, 1949, a notice was posted on board said vessel notifying the crew that the said Milton was not the authorized commanding officer thereon; that said Milton was on board said vessel from May 16th to May 30th, 1949, and that said Milton's authority as captain of said vessel, if any, was not publicly repudiated until the published notices in the newspapers of May 31st, June 1st and 2nd, 1949, by notice posted on the motor vessel "Queen Anne" on May 30th, 1949, and that the supplier-claimants were each further so advised by registered mail on June 27th, 1949.

That the crew refused to leave the M/V "Queen Anne" until they were paid and finally on June 14th, 1949, they accepted a settlement of all claims for wages and/or subsistence up to and including May 30th, 1949, signing a release of all claims up to that date and agreeing that said settlement should not constitute any admission of liability on the part of said Findley or the vessel and that it was without prejudice to any claim or suit that such crew might bring thereafter for wages and/or subsistence after May 30th, 1949; that the crew agreed to forthwith remove themselves from the M/V "Queen Anne", which they did, but without prejudice to their rights to collect wages from May 30th to June 14th; that the libel of the crew is for

wages and subsistence claimed between May 30th and June 14th, 1949, the date of such removal.

That while the said Milton and said crew were aboard said vessel, the said Milton did order certain supplies from the libelants, Red Top Super Markets, Inc., Hopkins-Carter Hardware Company, S. Appel & Co., and certain services and supplies from Kenneth C. Braidman, d/b/a Bert's French Cleaners, which are the basis for their respective libels and intervening libels.

That the delivery and/or performance by the libelants of the supplies, provisions and services and the value thereof are not questioned in this appeal; nor is there any question that if the crew is entitled to anything, the amounts allowed are the correct amounts. The sole question is whether the said Hans G. Milton had any authority, either actual or apparent, to bind the credit of the vessel or the owner for the amounts of the various libels which have been sustained by the United States District Court upon the Special Master's recommendations.

The above and foregoing constitutes the statement of facts in this cause as agreed to by the undersigned proctors for the respective parties.

JOHN P. BOOTH and
FRANK J. O'CONNOR,
Proctors for Claimant Appellant.

By FRANK J. O'CONNOR,
PALLOT & TATHAM,
Proctors for Libelants and Interveners.

By THOMAS L. TATHAM,
W. F. PARKER,
Proctor for Ukko Ahnger, Individually and as Trustee.

(LIBELANT'S EXHIBIT C-1.)

On August 15, 1949, the Commissioner admitted into evidence Libelant's Exhibit C-1 in words and figures as follows:

Eleven Broadway, New York 4, N. Y.

May 12, 1949.

Merrill-Stevens Dry Dock Co.
1270 N. W. Eleventh Street
Miami, Florida.

Dear Sirs,

This is to authorize Capt. H. G. Milton, the bearer of this letter, to go on board the m/v "Queen Anne" in order to make the necessary arrangements for her departure from Miami as soon as the repairs are completed.

For owners of m/v "Queen Anne"
(S.) ARTUR J. JOTIC,
(Artur J. Jotic).

On March 3, 1950 the COMMISSIONER'S REPORT was filed in words and figures as follows:

(Title Omitted.)

To the Honorable Judge of the above styled Court:

Hearings for the taking of testimony in this cause were had before me, as Commissioner, at Miami, Florida on August 15, 1949, September 7, 1949 and December 16, 1949,

a transcript of the testimony and a file of the exhibits admitted in evidence are filed herewith.

Issues.

Members of the crew of the Motor Vessel Queen Anne claim a lien against said vessel for wages and certain suppliers claim liens against the vessel for necessaries furnished at the request of the Captain.

The owner of the vessel denies that the Captain was employed as the Master of the vessel and denies his authority to obligate the vessel for the services of the crew and the supplies furnished by the suppliers.

Findings of Fact.

On May 18th and 19th the Captain of said vessel employed a crew which remained on board the vessel and performed their duties as members of the crew until June 14, 1949 when they were discharged. The members of the crew and the sums owing them for their said services are as follows:

Name—Rating	Amount due and unpaid as of June 14, 1949
J. Reynolds, Mate	$125.00
E. Nord, Boatswain	260.00
J. Breaux, A. B.	62.45
M. Karlsen, A. B.	62.45
T. Jacobsen, Motorman	112.50
E. Dahlberg, Asst. Engineer	162.50
S. Syron, Asst. Engineer	187.50
D. Swan, Chief Engineer	170.08
B. Bowman, Steward	125.00
D. Acosta, Oiler	45.00

E. Sanchez, Oiler	45.00
J. Runoso, Oiler	45.00
B. Acosta, Messman	25.00
G. Nassar, Carpenter	150.00
Total	$1,567.48

Bert's French Cleaners furnished laundry and dry cleaning service of the value of $351.32 to the vessel between May 18, 1949 and May 30, 1949 at the request of Captain Milton.

Hopkins Carter Hardware Company furnished hardware and other merchandise of the value of $402.29 to the vessel between May 18, 1949 and May 30, 1949 at the request of Captain Milton.

S. Appel and Co., Inc. furnished uniforms and other wearing apparel of the value of $173.45 to the vessel between May 18, 1949 and May 30, 1949 at the request of Captain Milton.

Red Top Super Markets, Inc. furnished food supplies of the value of $1148.03 to the vessel between May 18, 1949 and June 3, 1949 at the request of Captain Milton. Of this total $178.42 was furnished after May 30th, on which date the owners' attorney posted a notice on the vessel that no persons other than duly appointed representatives of Merrill Stevens Dry Dock Company were permitted aboard the vessel and that all other persons were trespassers.

The supplies and services mentioned above were within the reasonable needs of the vessel, considering the fact it was making ready to put to sea.

Captain Milton had at least apparent or presumptive authority to act as Master of the vessel.

Prior to April 26, 1949, the Motor Vessel Queen Anne was owned by a Panamanian corporation in which W. H. Findley, Artur J. Jotic and a Mr. Dennis were officers and stockholders.

On April 26, 1949 W. H. Findley purchased the Motor Vessel Queen Anne from the United States Marshal at a sale of said vessel made to satisfy claims asserted in libels then pending in this Court. Among others, Great Northern Trading Company, of which Mr. Dennis was an officer, Mr. Findley and Mr. Jotic each had liens against said vessel.

Prior to said Marshal's sale it had been agreed by Findley, Jotic and Dennis that they would purchase said vessel at said sale in the name of a corporation to be formed by them which would use their liens against the vessel as credits on the purchase price; and at or about this time Captain Hans G. Milton, who holds an unlimited Master's license, was negotiating with Findley, Jotic and Dennis for the Fram Shipping and Industrial Corporation to operate said vessel on some kind of an arrangement for the new corporation.

By the time the sale was made by the Marshal the plan to form the new corporation and use the liens of said individuals against said vessel as credits on the purchase price was abandoned and W. H. Findley purchased same in his name. He held title to said vessel until August 1, 1949 and kept it at Merrill Stevens Shipyard at Miami during that time.

On May 16, 1949 Captain Hans G. Milton arrived in Miami from New York bearing a letter from Artur J. Jotic to Merrill Stevens Dry Dock Company, dated May 12, 1949, signed "For owners of Motor Vessel Queen Anne" "Artur J. Jotic", authorizing him to go on board the vessel to make arrangements for her departure from Miami as soon as repairs were completed.

The Captain had been instructed by Mr. Jotic to calll on Messrs. O'Connor and Booth, attorneys for the owners of the vessel, on his arrival at Miami, and to engage the services of the International Forwarding Service in Miami as the ship's agent. Pursuant to these instructions he called on Mr. O'Connor on May 16th and requested that he designate someone to go on board the vessel with him to take an inventory of the ship's gear. On this visit he advised Mr. O'Connor that certain papers concerning the ownership of the vessel were supposed to be forwarded to Mr. O'Connor from Mr. Findley's office in Pennsylvania. Not having received these papers Mr. O'Connor called Mr. Findley's office and was told by Mr. Hartman, an associate and agent of Mr. Findley, that he knew nothing about such papers but that he would discuss the matter with Mr. Findley and let him hear from him. Mr. O'Connor then arranged with Merrill Stevens Dry Dock Company to send a man on board the vessel with Captain Milton to take the inventory.

After his visit with Mr. O'Connor Captain Milton, on the same date, May 16th, presented his letter from Mr. Jotic, dated May 12, 1949, to Merrill Stevens Dry Dock Company and informed them he was ready to take the inventory. Whereupon an official of Merrill Stevens telephoned Mr. Findley's office and then gave the Captain certain keys to the vessel and assigned a man to assist him in taking the inventory.

From that time on the Captain had free access to the vessel.

Two days later the Captain engaged a crew, the members of which began the performance of their duties on the 18th and 19th of May and remained on the vessel and continued to perform said duties until June 14, 1949.

On May 21, 1949 the owners' attorney learned that a crew had been employed, whereupon he informed the Captain that he was not authorized to employ a crew. On May 30, 1949 he advised the members of the crew that the Captain had not been authorized to employ them and instructed them to leave the vessel. They refused to comply until they had been paid for their services.

On June 14, 1949 the owners' attorney paid most of the members of the crew for their services through May 30, 1949 and discharged them.

In the meantime, between May 16th and June 3rd supplies were being furnished to the vessel within the view of Merrill Stevens' officials and employees in whose care the vessel was entrusted by the owners.

It is possible that Jotic did not intend that Milton would be the Master of the vessel but he does not appear to deny the Captain's asertions that he was to be, although the record shows that he did cooperate with Findley in the defense of this suit. (See Libelant's Exhibits C-3, C-5.)

Mr. Findley apparently did not employ Captain Milton as Master of the vessel and did not intend that he would exercise that authority but he and his agents at least permitted Captain Milton to assume and exercise that

authority and the members of the crew and the suppliers were therefore justified in relying upon his apparent authority to employ them and to purchase their services and supplies.

Conclusions of Law.

Even though Captain Milton may have lacked actual authority to serve as Master of the vessel, the crew and the supply men were justified, in the circumstances, in relying on his apparent or presumtive authority and therefore are entitled to liens upon the vessel for the sums due them. (See Angie B. Watson, 274, F. 218.)

The crew is not entitled to double wages, as prayed for, for the reason there was sufficient cause for non-payment of said wages. (See O'Hara v. Luckenback, 16 F. 2d 681; The Silver Shell, 255 F. 340; U. S. C. A. Title 46, Section 596.)

Recommendations.

I recommend that a decree be entered herein for members of the crew and for the suppliers mentioned in this report for the sums herein found to be due to them, together with the costs of this suit, and that the libelants be decreed to have liens on said vessel for said sums.

Remarks.

Proctor for the claimant has deposited with me $150.00 and proctor for the supply men has deposited with me the sum of $100.00, said sums to be applied on the cost of services of the court reporter herein and on any fee which may be allowed to the undersigned.

Out of said sum the Commissioner has paid G. C. Moseley and Associates the sum of $101.50 for their services as a Court reporter. The Commissioner therefore has on hand $148.50.

It is requested that the Court fix and allow appropriate compensation for my services and that the same be taxed as costs.

Respectfully submitted,
(S.) ROBERT H. GIVENS, JR.,
(Robert H. Givens, Jr.),
Commissioner.

On April 4, 1950, EXCEPTIONS TO THE COMMISSIONER'S REPORT were filed in words and figures as follows:

(Title Omitted.)

Comes now, H. W. Findley, claimant, by John P. Booth and Frank J. O'Connor, proctors, and files his exceptions to the commissioner's report filed herein and asserts:

1. The commissioner erred in finding that Hans G. Milton was captain of the M/V "Queen Anne." The commissioner should have found and recommended that Hans G. Milton was at no time captain of the M/V "Queen Anne."

2. The commissioner erred in finding that Hans G. Milton had any authority either actual or apparent or presumptive to represent the owner of the M/V "Queen Anne" or to bind the said vessel for debts incurred by

said Hans G. Milton. The commissioner should have found and recommended that Hans G. Milton was acting individually and on his own behalf in an effort to work out a charter for said M/V "Queen Anne".

3. The commissioner erred in finding that the members of the alleged crew have any claim against the vessel for services performed at the alleged hiring of Hans G. Milton. The commissioner should have found and recommended that the crew's claim, if any, was against Hans G. Milton personally and not against the M/V "Queen Anne", or its owner. The commissioner should also have found and recommended that there was no privity of contract between the owner of the vessel and the crew.

4. The commissioner erred in finding that the members of the alleged crew performed any duties with respect to said M/V "Queen Anne" after the 30th day of May, 1949. The commissioner should have found and recommended that the alleged crew was trespassing aboard said vessel after the 30th day of May, 1949.

5. The commissioner erred in finding that libelant Bert's French Cleaners alleged claim constitutes a Maritime lien within the jurisdiction of this Court. The commissioner should have found and recommended that the said claim was against Hans G. Milton personally and that the services supplied by claimant were not necessary. The commissioner should have also found that there was no privity between the owner of the vessel and the libelant.

6. The commissioner erred in finding that libelant Hopkins Carter Hardware Co. alleged claim constitutes a Maritime lien within the jurisdiction of this Court. The commissioner should have found and recommended that

the said claim was against Hans G. Milton personally and that the services supplied by claimant were not necessary. The commissioner should have also found that there was no privity between the owner of the vessel and the libelant.

7. The commissioner erred in finding that libelant S. Appel & Company alleged claim constitutes a Maritime lien within the jurisdiction of this Court. The commissioner should have found and recommended that the said claim was against Hans G. Milton personally and that the services supplied by claimant were not necessary. The commissioner should have also found that there was no privity between the owner of the vessel and the libelant.

8. The commissioner erred in finding that libelant Red Top Super Markets, Inc. alleged claim constitutes a Maritime lien within the jurisdiction of this Court. The commissioner should have found and recommended that the said claim was against Hans G. Milton personally and that the services supplied by claimant were not necessary. The commissioner should have also found that there was no privity between the owner of the vessel and the libelant.

9. The commissioner erred in finding that one Jotic had any authority to sign the letter dated the 12th day of May, 1945 "for owner of M/V Queen Anne." The commissioner should have found and recommended that Arthur J. Jotic was without any authority to represent the owner of the M/V "Queen Anne" and that H. W. Findley during all of the time from the date he purchased the M/V "Queen Anne" at the U. S. Marshal sale on April 26th, 1949, was the sole and only owner of said vessel and the only person authorized to give any instructions concerning said vessel. The commissioner should also

have found that said Jotic was available as a witness for the alleged claimants and was not called by them.

10. The commissioner erred in finding Arthur J. Jotic had or claimed any lien against the said M/V "Queen Anne" as there is no evidence to support such a finding.

11. The commissioner erred in finding that the crew and the supply men were justified in the circumstances in relying on the apparent or presumptive authority of Hans G. Milton and, therefore, are entitled to liens upon the vessel for the sums alleged to be due them. The commissioner should have found and recommended that both the crew and suppliers had the affirmative duty of inquiry as to the authority of Hans G. Milton and had no right to rest upon any presumption, apparent or otherwise, of authority. The commissioner should have found that the crew and suppliers could, upon inquiry, have ascertained that Hans G. Milton had no authority to bind the owner of the M/V "Queen Anne" or said vessel itself. The commissioner also should have found that in choosing to rely upon any apparent or presumptive authority of Hans G. Milton, the crew and suppliers did so at their own risk and must abide by the consequences.

12. The commissioner erred in finding that the M/V "Queen Anne" was making ready to put to sea. The commissioner should have found and recommended that the M/V "Queen Anne" was in dry dock for repair at Merrill-Stevens Dry Dock Company.

13. The Commissioner erred in recommending that a decree be entered for the members of the crew and the suppliers for the sums claimed and that the libelant be decreed to have liens on said vessel for said sums. The

commissioner should have found and recommended that the libels be dismissed with cost against the libelants.

JOHN P. BOOTH and
FRANK J. O'CONNOR,
By (S.) JOHN P. BOOTH,
Proctors for claimant.

State of Florida,
County of Dade, ss.

Before me, the undersigned authority, personally appeared Anita De Ferrer, who, having been duly sworn, deposes and says that she is a secretary in the office of Booth, Gordon & O'Connor, Proctors for Claimant in the above styled cause, and that she mailed a copy of the foregoing Exceptions To The Commissioner's Report to Hon. William L. Pallot, and Hon. William F. Parker, Proctors for Libelants herein, having placed the same in envelopes with sufficient postage to insure their regular delivery through the agency of the U. S. Mail.

(S.) ANITA de FERRER.

Sworn to and subscribed before me this 21st day of March, 1950.

(S.) RICHARD R. BOOTH,
(Notary Seal) Notary Public, State of Florida at large.

My commission expires Feb. 21, 1954.

Bonded by American Surety Co. of N. Y.

JOHN P. BOOTH and FRANK J. O'CONNOR,
Attorneys at Law,
1625-26 Du Pont Bldg.,
Miami, Florida.

On April 28, 1950, Final Decree was entered in words and figures as follows:

FINAL DECREE.

In the District Court of the United States, Southern District of Florida. In Admiralty.

D

(Rubber Stamp: Filed Miami, Fla., Apr. 28, 1950, Edwin R. Williams, Clerk.)

Red Top Super Markets, Inc., a Florida corporation, Libelant,

vs.

The Motor Vessel "Queen Anne" and her engines, tackle, furniture, apparel and appurtenances, etc., Respondent.

No. 789, 790, 794-M, Consolidated.

This Cause came on to be heard upon the exceptions of the claimant, H. W. Findley, to the Commissioner's report, and motion of the libelants and the intervening libelants for the entry of a final decree herein, ratifying, confirming, and adopting the report of the Commissioner, and awarding to the libelants and intervening libelants the sums determined by the Commissioner as damages sustained by them respectively, together with interest and costs; and the Court having heard proctors for the respective parties, and previously having considered the Commissioner's report, and being otherwise fully advised in the premises, it is

Ordered, Adjudged and Decreed as Follows:

1. That the claimant's exceptions to the Commissioner's report be and they are hereby overruled.

2. That the report of Robert H. Givens, Commissioner herein, be and the same is hereby ratified and confirmed in all respects and is adopted as the findings and conclusions of this Court upon which this decree is being entered.

3. That the libelant, Ukko Ahnger, individually, by reason of the proof submitted and stipulation of proctors, do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel and appurtenances, etc., damages in the amount of One Hundred Eighty-seven and 50/1— ($187.50) Dollars, together with interest thereon from the date of this decree at the rate of six per cent (6%) per annum, and together with costs taxed herein as follows:

Proctors Fee	$20.00
Clerk's Fee	15.00
Total	$35.00

4. That the libelant, Ukko Ahnger, as Trustee for the individual seamen named in the Commissioner's said report, do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel, appurtenances, etc., damages in the amount of One Thousand Five Hundred Sixty-seven and 48/100 ($1,567.48) Dollars, together with interest thereon from the date of this decree at the rate of six per cent (6%) per annum.

5. That the intervening libelant, Kenneth C. Braidman, doing business as "Bert's French Cleaners", do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel, appurtenances, etc., damages in the amount of Three Hundred Fifty-one and 32/100 ($351.32) Dollars, together with interest thereon from the date of this decree at the rate of six percent (6%) per annum, and together with costs taxed herein as follows:

Proctor's fee	$20.00
Marshal's fee	8.70
Bond Premium	10.00
Total	$38.70

6. That the intervening libelant, Hopkins-Carter Hardware Company, do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel, appurtenances, etc., damages in the amount of Four Hundred Two and 29/100 ($402.29) Dollars, together with interest thereon from the date of this decree at the rate of six percent (6%) per annum, and together with costs taxed herein as follows:

Proctor's Fee	$20.00
Marshal's Fee	8.56
Bond Premium	10.00
Total	$38.56

7. That the intervening libelant, S. Appel & Co., Inc., do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel, appurtenances, etc., damages in the amount of One

Hundred Seventy-three and 45/100 ($173.45) Dollars, to-together with interest thereon from the date of this decree at the rate of six percent (6%) per annum, and together with costs taxed herein as follows:

Proctor's Fee	$20.00
Clerk's Fee	15.00
Marshal's Fee	8.14
Bond Premium	10.00
Total	$53.14

8. That the libelant, Red Top Super Markets, Inc., do, have and recover in this action against the Motor Vessel "Queen Anne", her engines, tackle, furniture, apparel, appurtenances, etc., damages in the amount of Nine Hundred Sixty-nine and 61/100 ($969.61) Dollars, $178.42 of the total claim of this libelant being disallowed by reason of the fact that the supplies represented thereby were furnished after May 30, 1949, the date of the posting of the notice by the claimant to the effect that neither he nor the ship would thereafter be liable for supplies furnished thereto on the Order of Captain Hans Milton, together with interest thereon from the date of this decree at the rate of six percent (6%) per annum, and together with costs taxed herein as follows:

Proctor's fee	$20.00
Clerk's fee	15.00
Marshal's fee	8.28
Bond Premium	10.00
Total	$53.28

9. All of the aforesaid sums shall be paid and satisfied out of the funds deposited in the Registry of this Court by the claimants owner, and shall be paid as hereinafter directed. (JWH)

10. That unless this decree be satisfied or proceedings thereon stayed by appeal within twenty (20) days after the date of the entry of this decree then the Clerk is hereby directed to pay over to the respective proctors for the libelant and the intervening libelant out of claimant's bonds posted with the Clerk of this Court by the claimant-owner H. W. Findley to the extent necessary to satisfy and fully pay the amount above described to be due the libelant and intervening libelant.

11. That a reasonable fee for the services rendered herein by Robert H. Givens, Esq., as Commissioner, is hereby fixed in the amount of Three Hundred Dollars ($300.00), and the said fee is hereby taxed as cost against the respondent vessel and the said claimant-owner, and is taxed in addition to the amount of cost awarded the libelants and intervening libelants herein. It appearing that the proctor for the claimant-owner has heretofore deposited with the Commissioner the sum of One Hundred Fifty Dollars ($150.00), and that William Pallot, Esq., proctor for certain libelants and intervening libelants, has deposited with him the sum of One Hundred Dollars ($100.00), said sums to be applied on the cost of the services of the Court reporter and on the Commissioner's fee, and that out of said sums the Commissioner has paid the court reporter the sum of One Hundred and One and 50/100 ($101.50) Dollars for services, and that the commissioner therefore now has on hand the sum of One Hundred Forty-eight and 50/100 ($148.50) Dollars, it is hereby ordered that the Commissioner collect from the said claimant-owner, or from the funds deposited in the

Registry of the Court by him, the net balance of Two Hundred Fifty-one and 50/100 ($251.50) Dollars, out of which he, the said Commissioner, shall reimburse the said William Pallot, proctor for certain libelant and intervening libelants, the advancement of one Hundred Dollars ($100.00), heretofore made by him as aforesaid.

12. That if there is any balance of the funds from claimant's bonds posted with the Clerk of this Court by the claimant-owner after payment and satisfaction of the amounts above described to be paid, then, in that event the said balance is to be refunded to Messrs. John P. Booth and Frank J. O'Connor, proctors for the claimant-owner.

13. That all stipulations for costs heretofore filed in these causes as herein consolidated, be and the same are hereby dissolved and canceled. Decree of 14th of April, 1950 is hereby vacated.

Done And Ordered in Chambers at Miami, Florida, this 28th day of April, 1950.

(S.) JOHN W. HOLLAND,
United States District Judge.

On May 15, 1950, Notice of Appeal was filed in words and figures as follows:

NOTICE OF APPEAL.

In the District Court of the United States, Southern District of Florida, In Admiralty.

D

(Rubber Stamp: Filed Miami, Fla., May 15, 1950, Edwin R. Williams, Clerk.)

Red Top Super Markets, Inc., a Florida corporation,
Libelant,
vs.
The Motor Vessel "Queen Anne", and her engines, tackle, furniture, apparel and appurtenances, etc., Respondent.

Nos. 789, 790, 794-M, (Consolidated).

To: Pallot & Tatham, Esqs., Attorneys at Law, 1214-1217 Congress Building, Miami, Florida, Proctors for Libelant and interveners, S. Appel & Co., a New York corporation; Kenneth C. Braidman, d/b/a Bert's French Cleaners, and Hopkins-Carter Hardware Co., a Florida corporation.

William F. Parker, Esq., Attorney at Law, Ingraham Building, Miami, Florida, Proctor for Ukko Unhger, individually and as trustee.

Clerk of the District Court of the United States, Southern District of Florida, Miami Division, Miami, Florida.

Notice Is Hereby Given that H. W. Findley, claimant in the above styled consolidated Admiralty cause, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit from the Final Decree of Judge John W. Holland herein done and ordered at Miami, Florida, the 28th day of April, 1950.

JOHN P. BOOTH & FRANK J. O'CONNOR,
By (S.) JOHN P. BOOTH,
Proctors for Claimant.

John P. Booth & Frank J. O'Connor,
Attorneys at Law,
1625 DuPont Building,
Miami 32, Florida.

In the United States District Court for the Southern District of Florida. Miami Division.

United States of Amreica,
Southern District of Florida.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered 1 to 22 contain a true full and complete copy of all such portions of the record, proceedings and evidence in the cause styled Red Top Super Markets, Inc., a Florida corporation vs. The Motor Vessel "Queen Anne", 789-M-Adm., 790-M-Adm., 794-M-Adm. Consolidated, as appear upon the records and files of my office that have been stipulated by counsel to be included in this record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, on this the 11th day of August, A. D. 1950.

EDWIN R. WILLIAMS,
(Seal) As Clerk of the United States District Court in and for the Southern District of Florida.
By EARLE F. SPRIGG,
Deputy Clerk.

[fol. 28] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of April 9, 1951

No. 13355

H. W. FINDLEY, Claimant of the Motor Vessel "Queene Anne"

versus

RED TOP SUPER MARKETS, INC. et al.

On this day this cause was called, and after argument by Frank J. O'Conner, Esq., for appellant, and W. F. Parker, Esq., for appellees, was submitted to the Court.

[fol. 29] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 13,355

H. W. FINDLEY, Claimant of the Motor Vessel "Queen Anne", Appellant,

versus

RED TOP SUPER MARKETS, INC., et al., Appellees

Appeal from the United States District Court for the Southern District of Florida

(May 10, 1951)

OPINION AND DISSENTING OPINION OF THE COURT—Filed May 10, 1951

Before Holmes, McCord and Russell, Circuit Judges

McCORD, Circuit Judge:

The M/V "Queen Anne" was libelled on June 17, 1949, by Red Top Super Markets, Inc., and thereafter further libel

proceedings were filed by one Ukko Ahnger, acting individually and as trustee for crews' wages, by S. Appel & Co. and Hopkins-Carter Hardware Co. for supplies, and by Kenneth C. Braidman, doing business as Bert's French Cleaners, for supplies and services. The libels were consolidated, and the owner of the vessel, H. W. Findley, [fol. 30] filed his answer claiming ownership in each of the respective causes.

The questions here presented are (1) whether one Hans G. Milton had authority to bind the owner of the vessel for the value of the supplies and services; and (2) whether the crew of the vessel is entitled to wages for a stated period subsequent to its discharge.

The material facts were stipulated. Briefly stated, they reveal that on the 25th of April, 1949, the M/V "Queen Anne" was sold at a United States Marshal's sale held in Miami, Florida, to the Claimant, H. W. Findley, residing at 4 Glass Street, Carnegie, Pennsylvania; that a Bill of Sale was issued to Findley by the United States Marshal, after which Findley left the vessel at Merrill-Stevens Dry Dock Company in order to have certain repair work done; that while the vessel was in dry dock one Hans G. Milton contacted the attorneys for the Claimant, H. W. Findley, in Miami, Florida, and represented to them that he had been negotiating with the owners of the vessel, and inquired about the arrival of certain papers and instructions; that when the papers and instructions concerning Milton did not arrive, he requested permission to go aboard the vessel for the purpose of taking an inventory; that Milton was granted permission by one Frank J. O'Connor, as attorney for the owner, to go aboard the vessel, then in the custody of Merrill-Stevens Dry Dock Company, for the purpose of taking an inventory; and that while he was aboard the vessel he ordered certain supplies and services from the libellants, which supplies were delivered and services performed, and for which payment is sought in these libel proceedings.

It was shown that Hans G. Milton went aboard the [fol. 31] vessel on May 16th, purporting to assume the duties as Captain thereof, and that he remained aboard until May 30th, 1949; that shortly after going aboard he hired a crew for the vessel and placed them on the ship; that on May 30, 1949, no articles having been signed, the members of the crew were advised that Milton had not

been authorized to employ them and they were instructed to leave the vessel; that the crew refused to leave until they had been paid for their services, and they were finally paid for services rendered through May 30, 1949, after which they signed a release for all claims up to that date, agreeing that such payment would not constitute any admission of liability on the part of the owner of the vessel, and that it was without prejudice to any claim which they might have or later assert as to their right to collect wages from May 30, 1949, until June 14, 1949, the day they left the vessel. It is the above period for which the claim for crews' wages and subsistence is asserted in this proceeding.

We are of opinion these libelants have failed to carry their burden of proving that Milton had any authority, either actual or apparent, to bind the credit of the vessel or its owner for the value of the supplies and services furnished. The duty of suppliers of materials or services to a vessel to inquire as to the authority of the person ordering them has been clearly defined by our Court of Last Resort in the case of *U. S. et al. v. Carver et al.*, 260 U.S. 482, at page 488:

> " • • The Act of 1910, by which the transactions with the Clio were governed, after enlarging the right to a maritime lien and providing who shall be presumed to have authority for the owner to procure supplies for the vessel, qualifies the whole in section 3 as follows: 'but nothing in this Act shall be construed to [fol. 32] confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, *agreement for sale of the vessel*, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.' We regard these words as too plain for argument. They do not allow the material-man to rest upon presumptions until he is put upon inquiry, they call upon him to inquire. To ascertain is to find out by investigation. If by investigation with reasonable diligence the material-man could have found out that the vessel was under charter, he was chargeable with notice that there was a charter; if in the same way he could have found out its terms

he was chargeable with notice of its terms. * * * "
See also, Title 46 USCA, Sections 971, 972 and 973.

Here, the vessel was never purchased or owned by anyone from whom Milton had authority to act. Moreover, the ownership of the vessel by the Claimant, Findley, was a matter of public record, and this fact, as well as Milton's lack of authority to bind the owner or credit of the vessel, could have been readily ascertained by the suppliers upon a routine inquiry or investigation. This duty to exercise reasonable care and diligence in order to ascertain whether the person ordering the supplies and services for the vessel has authority to do so is a burden which the law imposes upon supplier and materialmen. Any other rule would encourage laxity in our admiralty laws, and place a premium on fraud and collusion between dishonest masters and those who extend credit to a vessel. In this case it is without dispute that the suppliers made no inquiry as to the authority of Milton. Under such circumstances, the language of the court in the case of *Morse Dry Dock &* [fol. 33] *Repair Co. v. U. S.*, 1 F. 2d 233, 237-238, is particularly applicable here:

> In our opinion the *Carver* case is decisive of the case now before the court. The libelant herein was bound to inquire, and had no right to rest upon presumptions. If he had inquired, if he had exercised reasonable diligence, he could certainly have ascertained the terms of the charter party, and that the Steamship Company, in ordering the repairs, was without authority to bind the vessels. * * *
>
> "In choosing to rely solely upon the loose statements made to it by an officer of the Steamship Company, it did so at its own risk, and must abide the consequences. The facts were readily ascertainable; the inquiry into the facts was a duty under the statute. And when a duty to make inquiry exists, it must appear that the one whose duty it was to inquire prosecuted his inquiry with all the care and diligence required of a reasonably prudent man. * * "

We further find no justification for any further payments to the crew of the vessel for wages and subsistence after the date of their discharge. It is undisputed that

the crew was advised on May 30, 1949, that Milton had no authority to employ them, and that they were requested to leave the vessel at that time. Furthermore, they have received payment for their services up until the date of their discharge. We know of no rule in admiralty law which entitles them to more.[1] See The Pakanoket, 156 Fed. 241; The Rescue, 116 Fed. 380.

[fol. 34] The cause is hereby reversed and remanded with directions to vacate the decree and dismiss the consolidated libels, with costs to be taxed against libelants.

Reversed and Remanded with directions.

RUSSELL, Circuit Judge, dissenting in part:

My view of the controlling effect of the facts in this case differs from that of the majority. There is ample support in the record for the finding of the commissioner, approved by the court, that the owner-claimant of the vessel by the acts of his attorney at law and of the agent having custody of the vessel permitted Captain Milton to board the vessel and become invested with apparent authority as its master. Even conceding the fact of the limitation upon his authority, it was in no way announced or made known to persons dealing with him in good faith as master. If master, which position the owner had permitted him to assume, he presumptively had authority to bind the vessel for necessary supplies.[2] A secret limitation upon apparent authority is of course an entirely different matter from a limitation contained in a charter and may properly direct a different result. The facts here take this case without the rule of *United States v. Carver,* 260 U.S. 482. Even if the owner-claimant be not barred by conduct in the circumstances here from challenging the actual authority of Captain Milton he is nevertheless, upon a principle which should be as sufficient in admiralty as in equity, not entitled to escape liability for supplies furnished, the necessity for which is not controverted. It seems clear that even

[1] Even assuming Milton's authority to hire a crew, since no articles were signed any contract of hire between them was merely verbal and without a definite term. As such, it was terminable at will by either party. See The Pakanoket, 156 Fed. 241.

[2] 46 U. S. C. A. Sec. 972.

in that view of the facts favorable to appellant both the [fol. 35] owner and suppliers must be deemed to occupy the position of innocent parties, and as between them, the owner, having placed it in the power of the third person, Milton, to accomplish the act which must result in payment or loss, should not be permitted to shift the loss to the suppliers.

I think the judgment of this Court as to the crew is proper. No articles were signed. They have been paid for a period of time extending beyond that when notice of lack of authority was given and their services terminated.

[fol. 36] JUDGMENT

Extract from the Minutes of May 10, 1951

No. 13355

H. W. FINDLEY, Claimant of the Motor Vessel "Queene Anne"

versus

RED TOP SUPER MARKETS, INC., et al.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that said cause be, and it is hereby remanded to the said District Court with directions to vacate the decree and dismiss the consolidated libels, with costs to be taxed against libelants;

It is further ordered, adjudged and decreed that the appellees, Red Top Super Markets, Inc. and Others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Russell, Circuit Judge, dissents in part."

[fols. 37-41] PETITION FOR REHEARING—Filed June 1, 1951

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 13,355

H. W. FINDLEY, Claimant of the Motor Vessel "QUEEN ANNE,"

Appellant

versus

RED TOP SUPER MARKETS, INC., ET AL,

Appellees

PETITION FOR REHEARING

The Appellees, by their undersigned Proctors, respectfully petition the Court for a rehearing on the appeal taken herein upon the following grounds:

I.

The judgment of the Court is incorrectly based on **U. S. et al v. Carver et al,** 260 U. S. 482, and **Morse Dry**

Dock & Repair Co. v. U. S., 1 F. 2d 233, on the mistaken impression that the situations and circumstances therein involved were similar to those involved in the case at bar, whereas, in fact, both cases are inapplicable by reason of the following dissimilarities:

(a) Both of the cited cases involved supplies and repairs ordered by the charterer's representatives for ships owned by the United States, which never at any time had anything to do with the placing of such representatives in a position to hold themselves out as having authority to bind the ships or the owner.

(b) It was made to affirmatively appear in both the cited cases that the owner, the United States, was not chargeable with any responsibility for placing the contracting parties in a position where they could exercise the apparent authority of owners' representatives, whereas in the case at bar it is undisputed that the owner, acting first by and through his attorney, and then his custodian, not only placed Milton in a position where he could exercise the apparent authority of a master, but knowingly permitted him to maintain such a position for a period of approximately two weeks without taking any steps whatsoever to repudiate him.

(c) In the cited cases there was no contact between the owner and the contracting parties, whereas in the case at bar there was a direct contact, through the medium of agents, between the owner and the alleged master who contracted for the supplies and services in question.

(d) In the cited cases, to use the language employed in the **Morse case**, "If it (the supplier) had made the least

effort to ascertain the facts it would have known that the steamship company could not create a lien on the vessels", because they, the libelants in those cases, could and would have, with slight effort, determined that the ships in questioned were owned by the United States and that the charterer's representatives, therefore, had no authority to create liens for repairs thereon. Indeed, it was affirmatively shown in this latter case, that Morse himself had actual knowledge of the underlying facts. However, in the instant case it is affirmatively shown that, to again use the language of the **Morse case,** " . . . the care and diligence required of a reasonably prudent man" would have led the libelants inevitably to the discovery that the man they contracted with, Milton, had been placed in a position of apparent authority by both the owner's attorney and custodian, where he was allowed to remain by them to their detriment for a period of two weeks without repudiation. As a matter of fact had any of them been particularly persistent they would have also discovered that the custodian acted only after making a long distance call to the office of the owner with reference to Milton's position and authority.

(e) In the cited cases the owner was quiescent and inactive in the presence of a public record of ownership, whereas in the case at bar the owner, working through his agents, was articulate and active.

(f) In the cited cases the libelants were not prejudiced by anything the owner said or did, whereas in the case at bar all of the damage suffered by the libelants is the direct and proximate result of the overt acts of the owner's acknowledged agents.

(g) In the cited cases it was never incumbent upon the owner to speak out in anyway or to publicly repudiate anyone, whereas in the instant case the owner remained silent when, in the exercise of fairness, equity and good conscience he should have spoken in a loud voice.

II.

With particular reference to the crew's claim, the Court apparently overlooked the following facts:

(a) No notice of the termination of the services of the crew was given to them directly by anyone in actual or apparent authority.

(b) The only notice furnished the crew was that given in the form of an unsigned, typewritten statement by people that they had a right to regard as interlopers.

(c) Under maritime law the members of a ship's company can be discharged only by the master, and this was never done.

WHEREFORE, the appellees respectfully move the Court to order a rehearing in this appeal.

PALLOT & TATHAM

By_____

_____

W. F. PARKER

Proctors for Appellees

I, W. F. PARKER, hereby certify that I am one of the Proctors for the Appellees in the above styled appeal, that I personally prepared the foregoing application for rehearing, and that, in my opinion, it is well-founded.

Dated at Miami, Florida, this.....day of May, 1951.

W. F. PARKER

Proctor for Appellees

I further hereby certify that I have served three copies hereof on the Proctors for Appellant, Messrs. John P. Booth and Frank J. O'Connor, this.....day of..... 1951.

W. F. PARKER

Proctor for Appellees

SUBJECT INDEX

	Page
Petition for writ of certiorari	1-4
Summary statement of matter involved	1-2
Jurisdictional statement	2-3
Question presented	3
Reasons relied on for allowance of writ	3
Prayer for writ	3-4
Brief in support of petition for writ of certiorari	5-10
Opinions of courts below	5
Jurisdiction	5-6
Statement of the case	6
Specification of errors	7
Argument	7-10
Summary of Argument	7-8
Point A	8-9
Point B	10

TABLE OF CASES CITED

Angie B. Watson, The, 274 F. 218	2, 3, 10
Morse Dry Dock & Repair Co. v. U. S., 1 F. 2d 233	2, 6, 7
United States et al v. Carver et al, 260 U. S. 482	2, 6, 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No._____

RED TOP SUPER MARKETS, INC., et al,

Petitioners,

v.

H. W. FINDLEY, Claimant of the Motor Vessel "QUEEN ANNE",

Respondent.

Petition for Writ of Certiorari

TO: The Honorable Frederick M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This petition is directed to the judgment of the United

States Court of Appeals for the Fifth Circuit, which judgment reversed the final judgment of the Federal District Court, Southern District of Florida, In Admiralty, and from the order denying the petition for re-hearing entered in the United States Court of Appeals for the Fifth Circuit on June 19th, 1951. The petitioners in this matter were the libellants in the Court below and sought to libel the Motor Vessel "QUEEN ANNE" for supplies furnished the vessel and for services of the crew. The Commissioner appointed by the Federal District Court recommended that a decree be entered for the libellants upon the finding that one Captain Milton had the apparent authority to order supplies and hire a crew, therefore, entitling the libellants to a lien upon the vessel for the sums due them under the authority of **The Angie B. Watson,** 274 F. 218.

The United States Court of Appeals held that the case was governed by **The United States et al v. Carver et al,** 260 U. S. 482, and **Morse Dry Dock & Repair Co. v. United States,** 1 F. 2d 233, and that under said cases the libellants were under a legal duty to determine the true owner of the vessel and the actual authority of Captain Milton, and, applying such rule, reversed and remanded said case to the Federal District Court and denied the petitioners' petition for re-hearing.

JURISDICTIONAL STATEMENT

It is contended by the petitioners herein that the Supreme Court has jurisdiction to review the judgment herein questioned because said judgment is contrary to law and that the order denying the petition for re-hearing entered on June 19th, 1951 is contrary to previous decisions

of the United States Court of Appeals and of the Supreme Court of the United States and this petition for certiorari is brought within the time allowed by the rules of this Court.

QUESTION PRESENTED

The question herein presented is: Where a vessel is in possession of a custodian, who permits a person to go on board as a master, which master engages a crew, actually directs the activities of the crew in outfitting the vessel, and where the custodian acknowledges that such person is master of the vessel, must suppliers seek out the owner (who may be in parts unknown) before the credit of the vessel can be bound by such master?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Petitioners contend that the judgment of the United States Court of Appeals for the Fifth Circuit in the instant case is in conflict with the judgment of the Court in **The Angie B. Watson,** 274 F. 218, District Court D, Massachusetts, June 15th, 1921.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket, No. 13355, H. W. Findley, Claimant of the Motor Vessel "QUEEN ANNE", Appellant, v. Red Top Super Markets, Inc., et al, Appellees,

to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by this Court and for such further relief as to this Court may seem proper.

Dated August 24th, 1951.

E. ALBERT PALLOT, W. F. PARKER and PALLOT, SILVER & MULLOY,

Counsel for Petitioners.

By_____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No._____

RED TOP SUPER MARKETS, INC., et al,
Petitioners,

v.

H. W. FINDLEY, Claimant of the Motor Vessel "QUEEN ANNE",
Respondent.

Brief in Support of The Petition for Writ of Certiorari

OPINION OF COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is not yet reported and is dated May 10th, 1951. The order denying the petition for rehearing, not yet reported, is dated June 19th, 1951.

JURISDICTION

The date of the judgment to be reviewed is June 19th, 1951.

The facts as stipulated in the Court below, (T. 2-6),

would show that one Hans G. Milton went aboard the Motor Vessel "QUEEN ANNE" with the permission of Frank J. O'Connor, attorney and agent for the owner, H. W. Findley, and remained aboard, exercising apparent authority as a master, with the approval of Merrill-Stevens Dry Dock Co., custodian of the vessel; that as such apparent master, he ordered supplies and hired a crew. Subsequently, his authority was repudiated and the suppliers and crew members now seek to establish a lien against the vessel for the reasonable amount of their services rendered and supplies delivered prior to such repudiation. The Commissioner, who was appointed by the Federal Court, recommended that a decree be entered in favor of the libellants and said decree was entered in the District Court of the United States, Southern District of Florida, In Admiralty, on April 28th, 1950. Subsequent thereto, the owner of the Motor Vessel "QUEEN ANNE" perfected an appeal to the United States Court of Appeals for the Fifth Circuit, wherein the decree of the Federal District Court was reversed and the cause remanded. The United States Court of Appeals based its decision on the cases of **The United States et al v. Carver et al**, 260 U. S. 482, and **Morse Dry Dock & Repair Co. v. United States**, 1 F. 2d 233, (Tr. 31, 32, 33); that by such a holding, the decision of this United States Court of Appeals is in conflict with the decision rendered by the said Court in **The Angie B. Watson**, heard in District Court D of Massachusetts in 1921, and reported in 274 F. 218.

STATEMENT OF THE CASE

This has already been stated in the preceding petition under pp. 1 and 2, which is hereby adopted and made a part of this brief.

SPECIFICATION OF ERRORS

1. The United States Court of Appeals for the Fifth Circuit erred in holding that the decisions in **The United States et al v. Carver et al** and **Morse Dry Dock & Repair Co. v. United States,** (supra), were controlling in the instant case.

2. The Court erred in holding that the suppliers were bound to make inquiry into the actual authority of the one ordering supplies, when such one was aboard the vessel with permission of the custodian of the vessel, and openly exercising authority as the master of the vessel.

ARGUMENT

SUMMARY OF ARGUMENT

Point A. The decisions rendered in **The United States et al v. Carver et al** and in **Morse Dry Dock & Repair Co. v. United States,** (supra) were based primarily upon the fact that the vessels were on charter and that the suppliers of said vessels could, upon the exercise of reasonable diligence, ascertain the terms of the charter party. The vessel in the present case was not under charter and, therefore, the suppliers could not have, by the exercise of reasonable diligence, found out anything more than they already knew.

Point B. Where the custodian of a vessel and the agent of the owner of the vessel clothe a person with the apparent authority of a master and permit him to board the vessel and exercise the powers afforded a master, then the suppliers may rely upon such apparent authority and are not bound by the secret instructions that may constitute the actual authority. That, when relying upon such apparent authority, the suppliers are entitled by law to a

lien upon the vessel for the reasonable value of the supplies and services.

POINT A

There is an elementary distinction between the two cases relied upon by the Court of Appeals and the instant case. The ships involved in both cited cases were owned by the United States government and were under charter. These ships were under the complete supervision and control of the charterers and the charterers' representatives and the suppliers and repairmen were actually and knowingly doing business with the charterers and the charterers' representatives and not the owner, which was the United States government. Whereas, in the instant case, there was no charter involved and the suppliers were doing business with the owner's authorized representative.

It was made to affirmatively appear in both cited cases that the owner, the United States, was not chargeable with any responsibility for placing the contracting parties in a position where they could exercise the apparent authority of owners' representatives, whereas in the case at bar, it is undisputed that the owner, acting first by and through his attorney and agent, and then his custodian, not only placed Captain Milton in a position where he could exercise the apparent authority of a master, but knowingly permitted him to maintain such a position for a period of approximately two weeks, without taking any steps whatsoever to repudiate him.

The opinion of the Court in **The United States et al v. Carver et al,** (supra), was that the owners of the vessel did nothing to clothe someone else with the apparent

authority to act for them, whereas in the instant case the owner of the vessel, his agent and custodian affirmatively committed acts that clothed Captain Milton with his apparent authority to act.

It is respectfully submitted that although the facts in the cited cases relied upon by the Court of Appeals are vastly different from those in the case at bar and that while the decisions in the cited cases do not apply directly to the case at bar, the reasoning behind those decisions, if applied, would necessarily result in an opposite decision in the instant case. In applying the cited cases the Court of Appeals in its opinion said: "To exercise reasonable care and diligence in order to ascertain whether the person ordering the supplies and services for the vessel has authority to do so is a burden which the law imposes upon the suppliers and materialmen and any other rule would encourage laxity in our admiralty laws and place a premium upon fraud and collusion between dishonest masters and those who extend credit to a vessel." Such law, when applied to the cited cases, is well founded and the reasoning behind the decisions is sound. Therefore, it follows and makes good sense that if similar reasoning were applied to the instant case, that is, to allow the owner to sit back and do nothing when he knew that a qualified master had taken command of his vessel, was making repairs, had engaged a crew, and was ordering supplies, would place a premium upon fraud and collusion and encourage dishonest masters and owners to take advantage of credit extended. To hold otherwise would be in restraint of trade and defeat the whole purpose of the law that authorizes libel in admiralty, for the suppliers would be required to contact the owner personally, although his whereabouts may be unknown, while the ship is in dire need of supplies or repairs.

POINT B.

The rule of law to be properly applied in the instant case is one of agency and the question to be determined is whether or not the owner of the vessel and his agents permitted Captain Milton to do and act as though he were truly acting within his scope of authority and if they did permit such actions and assisted in clothing him with such apparent authority, then the decree of the Federal District Court in allowing the lien was proper, based upon a long line of decisions, and particularly upon **The Angie B. Watson,** 274 F. 218.

To follow the decision of the United States Court of Appeals for the Fifth Circuit in the instant case would be to do away with the doctrine of apparent authority and it would be possible for owners of vessels to be bound to the suppliers only when such suppliers investigated the actual authority of the one acting for the owner. Such a decision is in conflict with old and established legal precedents and would act as a restraint upon trade.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

E. ALBERT PALLOT, W. F. PARKER and PALLOT, SILVER & MULLOY,

Counsel for Petitioners.

By_____

Receipt of a copy of the foregoing Petition and Brief, together with Transcript of Record in the Court below and Petition by Appellees for Re-hearing is hereby acknowledged.

JOHN P. BOOTH and
FRANK J. O'CONNOR,
Counsel for Respondent.

By_____

SUBJECT INDEX

	Page
OPINION OF THE COURT BELOW	1-2
JURISDICTION	2
STATEMENT OF THE CASE	2-6
ARGUMENT	7-16
SUMMARY OF ARGUMENT	7
POINT A	7-8
POINT B	8-15
POINT C	15-16
CONCLUSION	16

INDEX OF CASES CITED

Grays Harbor Stevedore Co. v. U. S., 5 Fed, 2d 585 (1925)	12
Morse Dry Dock v. U. S., 1 Fed. 2d 233 (1924)	12 & 13
The Capitaine Faure, 7 Fed. 2d 131 (1924)	12
The Jack-O-Lantern, 258 U. S. 96	11
The Lord Baltimore (D. C. Pa. 1921), 269 Fed. 824	12
The Pacific, 18 Fed. 703	16
The Pakanoket, 156 Fed. 241 (1907)	15 & 16

TABLE OF CASES CITED—Continued

Page

The Rescue, Pa. D. C. 1902, 116 Fed. 380 16

U. S. et al v. Carver et al., 260 U. S. 482 (1923) ..... 9 & 13

The Western Wave (CCA La. 1935), 77 Fed. 2d, 695, certiorari denied, 56 Sup. Ct. 156, 296 U. S. 633 11

OTHER AUTHORITIES CITED

Act of June 23, 1910—Chapter 373 10

United States Code Annotated, Title 46, Secs. 971, 972, 973 ..... 10 & 14

THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 330

RED TOP SUPER MARKETS, INC., ET AL.,

Petitioners,

versus

H. W. FINDLEY, Claimants of the Motor Vessel, "QUEEN ANNE,"

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINION OF THE COURT BELOW

The decision sought to be reviewed is the judgment of The United States Court of Appeals for the Fifth Circuit,

No. 13,355, entitled "H. W. FINDLEY, Claimant of the Motor Vessel "Queen Anne", Appellant, versus RED TOP SUPER MARKETS, INC., ET AL, Appellees," entered on May 10, 1951, re-hearing of which was denied by order of said Court on June 19, 1951. Neither the opinion of the Court, nor the order denying the petition for re-hearing have been reported.

JURISDICTION

Petitioners contend that the Supreme Court has jurisdiction to review the judgment below on the ground that said judgment is contrary to previous decisions of the United States Court of Appeals and of the Supreme Court of the United States. Respondent says that, although these statements purport to bring the petition within the purview of Supreme Court Rule 38, paragraph 5 (b), no decisions of the United States Court of Appeals or of the Supreme Court are cited which are in conflict with the decision of the Court below.

STATEMENT OF THE CASE

This cause comes up on a petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, which Court reversed a final judgment of the United States District Court for the Southern District of Florida, In Admiralty, in favor of the petitioners as the libelants of the M/V "Queen Anne" for supplies furnished to said vessel on the order of one Hans G. Milton and for the services of a crew engaged by said Milton. The United States District Court's final decree for the libelants was based upon the finding that said Milton had

the apparent or presumptive authority to act as Master of the vessel. The owner of the vessel, H. W. Findley, had specifically denied any authority to bind the credit of the vessel, or the owner, for the amounts of the various libels.

One of the libelants in the United States District Court was Ukko Ahnger, on behalf of himself and as trustee for the other members of the crew, for wages and subsistence subsequent to their discharge.

The contents of the Transcript of Record on appeal from the United States District Court for the Southern District of Florida to the United States Court of Appeals for the Fifth Circuit, was stipulated, (T. 1-2), to which there was appended an "Agreed Statement of Facts" (T. 2-6).

The Agreed Statement of Facts shows as follows:

a. That H. W. Findley purchased the Motor Vessel "Queen Anne" at United States Marshal's sale in the City of Miami, Florida on April 25, 1949; that Bill of Sale was executed to him therefor on May 2, 1949; that he contended he was the sole owner of said vessel; that he left said vessel at Merrill-Stevens Dry Dock Company for the purpose of having certain repairs done and completed.

b. That on or about May 16, 1949, one Hans G. Milton called upon the attorneys for the said H. W. Findley in Miami, Florida, inquiring about the arrival of certain papers and instructions to said attorneys in connection with negotiations said Milton had been having regarding

the Motor Vessel "Queen Anne"; that thereafter the said Milton requested permission to go aboard said vessel for the purpose of taking an inventory pending the arrival of said papers and instructions, which permission was granted; that thereafter said Milton was permitted to board said vessel for the purpose of taking said inventory; that thereafter the said Milton ordered certain supplies and services from the libelants and engaged the services of a crew.

c. That notice was posted on board said vessel on May 30, 1949 that the said Milton was without authority from the owner and that any one aboard the said vessel, except the employees of Merrill- Stevens Dry Dock Company, was a trespasser; that notice was published in the daily newspapers in Miami, Florida that said Milton was without authority from the owner on May 31st, June 1st and June 2nd, 1949.

d. That the crew engaged by the said Milton refused to leave the said vessel until they were paid; that on June 14, 1949, said crew accepted a settlement of all claims up to and including May 30, 1949 and executed a release providing that said settlement was no admission of liability on the part of the owner or the vessel and that such release was without prejudice to any claim or suit for wages or subsistence after May 30, 1949, and that said crew would remove themselves and their effects immediately from said vessel.

e. That the sole question was whether said Hans G. Milton had any authority, either actual or apparent, that would bind the credit of the vessel or the owner for the

amounts of the various libels which had been sustained in the United States District Court.

It is respectfully submitted that there is nothing in the Agreed Statement of Facts that shows that the said Milton remained aboard the vessel, exercising apparent authority as a Master with the approval of Merrill-Stevens Dry Dock Company, custodian of the vessel, as is set forth at the top of Page 6 of Petitioners Brief in Support of the Petition for Writ of Certiorari.

In accordance with the stipulation of the contents of the Record on appeal filed in the cause in the United States District Court on August 11, 1950 (T. 1 & 2) the Court of Appeals had before it the original records and exhibits from the Court below, including a transcript of the testimony.

It was not disputed that the suppliers made no inquiry as to the authority of the said Milton.

The questions presented to and decided by the Court of Appeals below were these: (1) Whether one Hans G. Milton had authority to bind the owner of the vessel for the value of the supplies and services; (2) whether the crew of the vessel is entitled to wages for a stated period subsequent to its discharge.

As to the first question, the United States Court of Appeals for the Fifth Circuit held that the libelants had failed to sustain the burden of proof that Milton had any authority, either actual or apparent, to bind the credit of the vessel or its owner for the value of the supplies and services furnished.

As to the second question, the Court of Appeals below held that the notification on May 30, 1949 discharged the crew and that they were not entitled to wages and subsistence after that date.

The United States Court of Appeals based its reversal of the judgment of the United States District Court in favor of the libelants for supplies and services upon the authority of the decision of the Supreme Court of the United States in the case **United States, Et Al** vs **Carver, Et Al,** 260 U. S. 482, on Title 46, USCA, Sections 971, 972, 973 and on the decision in the case **Morse Dry Dock & Repair Co.** vs **United States,** 1 F. 2d 233, 237-238.

The United States Court of Appeals reversed the judgment of the United States District Court in favor of the libelant-crew and based its decision on the point that the crew was not entitled to any payment after their discharge on May 30, 1949 citing **The Pakanoket** (Fed. 241) and **The Rescue,** 116 Fed 380.

It is respectfully submitted that the decision in this case and the decisions cited by the United States Court of Appeals for the Fifth Circuit as the bases thereof, are not in conflict with any other decisions of the United States Court of Appeals or of The Supreme Court of the United States, as is inferentially stated on Page 6 of the Petitioners Brief in Support of Petition for Writ of Certiorari in referring to the decision of the District Court of Massachusetts in the case of **The Angie B. Watson** reported in 274 F, 218.

SUMMARY OF ARGUMENT

POINT A:

The reasons set forth by petitioners for review of the decisions of the United States Court of Appeals for the Fifth Circuit do not fall within the purview of Supreme Court Rule 38, 5(b).

POINT B:

The decisions in the **United States, Et Al vs Carver, Et Al** and **Morse Dry Dock & Repair Co. vs. United States** (Supra) and Title 46 USCA, Sections 971, 972, 973 are controlling in the instant case.

POINT C:

The contract of hiring under which Milton, without authority, engaged a crew was terminated when said crew had notice of the denial of Milton's authority, and they were not entitled to any further wages and subsistence for the period during which they refused to surrender possession of the vessel.

ARGUMENT

POINT A

Under Supreme Court Rule 38, paragraph 5 (b), The Supreme Court has indicated the character of reasons which will be considered as a basis for review on Writ of Certiorari of a decision of a Circuit Court of Appeals.

The petition in this case fails to show any special and important reasons for the review on Writ of Certiorari of the decision of the Circuit Court of Appeals, as indicated in the rule.

The only reason set forth by petitioners is their contention that the judgment of the United States Court of Appeals for the Fifth Circuit in this case is in conflict with the judgment of a District Court in **The Angie B. Watson,** 274 F 218, District Court D, Massachusetts, June 15, 1921, which decision is not conflicting because it is a decision of a District Court.

POINT B

When the suppliers who furnished services and supplies to the Motor Vessel "Queen Anne" libeled the vessel, they alleged in their libels that said supplies and services were furnished to the vessel at the instance and request of her agents and/or employees, which allegation placed upon said libelants the burden of proof to show by a fair preponderance of credible evidence that the said Hans G. Milton was the agent or employee of the owner and had authority to bind the credit of the vessel.

As was found by the Court of Appeals below, the said Milton was permitted to go aboard the vessel for the purpose of taking an inventory, and that thereafter he hired the crew and ordered the supplies and services; that none of the suppliers made inquiry as to the authority of Milton; that the matter of ownership of the vessel was a matter of public record; and Milton's lack of authority could have been readily ascertained by the suppliers by a routine inquiry and investigation.

The Court of Appeals below held that the libelants had failed to carry their burden of proving that Milton had any authority, either actual or apparent, to bind the credit of the vessel or its owner for the value of the supplies and services furnished because of their failure to inquire as to the authority of the person ordering such supplies and services, citing the case of the **United States** vs **Carver, Et Al** (Supra) and quoting therefrom as follows:

> " . . . The Act of 1910, by which the transactions with the Clio were governed, after enlarging the right to a maritime lien and providing who shall be presumed to have authority for the owner to procure supplies for the vessel, qualifies the whole in section 3 as follows: 'but nothing in this Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.' We regard these words as too plain for argument. They do not allow the material-man to rest upon presumptions until he is put upon inquiry, they call upon him to inquire. To ascertain is to find out by investigation. If by investigation with reasonable diligence the Material-man could have found out that the vessel was under charter, he was chargeable with notice that there was a charter; if in the same way he could have found out its terms he was chargeable with notice of its terms . . . "

The decision in the **Carver** case was under the Act of June 3, 1910, chapter 373. Thereafter the Act of June 5, 1920, chapter 250, Section 30, subsection R-41, STAT. 1005, Title 46 was enacted which later statute the Court of Appeals below cited, referring to USCA Title 46, Sections 971, 972, 973, which reads as follows:

> "Sec. 971: Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of the vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by a suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.
>
> Sec. 972: The following persons shall be presumed to have authority from the owner to procure . . . necessaries "for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is entrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.
>
> Sec. 973: The officers and agents of a vessel specified in Sec. 972 of this title shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could

> have ascertained, that because of the terms of the charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies or other necessaries was without authority to bind the vessel therefor. June 5, 1920 c. 250 Sec. 30, Subsec. R-41, STAT. 1005"

In the annotations under this section appears the following:

> 'This section made no change in the general principles of the law of maritime liens.' The **Jack-O Lantern,** Mass. 1922, 42 S. Ct. 243, 258 U. S. 96, 66 L. Ed. 482.

The purpose of this section is stated as follows in the following annotation:

> 'This section and Sec. 973 of this title were not intended to take away any maritime lien existing by general maritime law, but were intended to require those who furnish necessaries to vessels as conditions precedent to existence of liens, to use reasonable diligence to ascertain that persons ordering necessaries have authority to bind such vessels.'

Citing **The Western Wave,** CCA La. 1935, 77 Fed. 2d 695, Certiorari denied, 56 S. Ct. 156, 296 U. S. 633, and on page 645, Note 8 of said annotations appears the following:

> 'One claiming lien for supplies . . . must at his peril make sure that the person ordering them

has actual or apparent authority to bind the vessel.' **The Lord Baltimore,** D. C. Pa. 1921, 269 Fed. 824.

See also **The Capitaine Faure,** 7 Fed. 2d 131, which was affirmed by the Circuit Court of Appeals, 2d Circuit."

See also **Morse Dry Dock & Repair Co.** vs. **United States,** 1 Fed 2d 233, in which the Court cited the Carver case, saying:

"In our opinion the Carver case is decisive . . . The libellant . . . was bound to inquire, and had no right to rest on presumptions; if he had inquired, if he had exercised reasonable diligence, he could have ascertained . . . that the Steamship Co., in ordering the repairs, was without authority to bind the vessel."

"In choosing to rely solely on the loose statements made to it by an officer of the Steamship Co., it did so at its own risk, and must abide the consequences. The facts were readily ascertainable; the inquiry into the facts was a duty under the statute . . . it must appear that the one whose duty it was to inquire prosecuted his inquiry with all the care and diligence required of a reasonably prudent man."

See also **Grays Harbor Stevedore Co.** vs. **United States,** 5 Fed. 2d 585.

The Court of Appeals below also stated in its opin-

ion that the language in the case of **Morse Dry Dock & Repair Company** vs. **United States,** 1 F. 2d 233, 237-238 was particularly applicable in the instant case quoting thereafter the following:

> "In our opinion the **Carver** case is decisive of the case now before the court. The libelant herein was bound to inquire, and had no right to rest upon presumptions. If he had inquired, if he had exercised reasonable diligence, he could certainly have ascertained the terms of the charter party, and that the Steamship Company in ordering the repairs, was without authority to bind the vessels."
>
> "In choosing to rely solely upon the loose statements made to it by an officer of the Steamship Company, it did so at its own risk, and must abide the consequences. The facts were readily ascertainable; the inquiry into the facts was a duty under the statute. And when a duty to make inquiry exists, it must appear that the one whose duty it was to inquire prosecuted his inquiry with all the care and diligence required of a reasonably prodent man."

In the instant case, the testimony of the suppliers was that they had made no inquiry at all as to the authority of Hans G. Milton. It is the contention of petitioners that the suppliers had a right to rely upon the mere fact of Milton's presence aboard the vessel as evidence of his apparent authority to bind the credit of the vessel or its owner, without making any inquiry or investigation as to whether Milton had any actual authority. Had such an

inquiry or investigation been made, the suppliers would have immediately found whether Milton had any authority, or not. The Court of Appeals below in its opinion (T. 31) stated:

> "This duty to exercise reasonable care and diligence in order to ascertain whether the person ordering the supplies and services for the vessel has authority to do so is a burden which the law imposes upon supplier and materialmen. Any other rule would encourage laxity in our admiralty laws, and place a premium on fraud and collusion between dishonest masters and those who extend credit to a vessel. In this case it is without dispute that the suppliers made no inquiry as to the authority of Milton."

The matter of a maritime lien in favor of one who furnishes repairs, supplies and necessaries to a vessel is governed in the United States by the statute defining the right of lien. (U.S.C.A., Title 46, Secs. 971, 972 & 973) It is an elementary concept of law that for one to avail himself of the protection and benefits of a statute, he must comply strictly with the other provisions of the statute. The failure of the suppliers in this case to make any inquiry at all as to Milton's authority brings them clearly within the provisions of U.S.C.A., Title 46, Sec. 973, debarring them from a maritime lien, which Section reads, in part, as follows:

> " . . . But nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of

the charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies or other necessaries was without authority to bind the vessel therefor. June 5, 1920 C. 250 Sec. 30, Subsec. R-41, Stat. 1005."

POINT C

The Court of Appeals below stated that they could find no justification for any further payments to the crew of the vessel for wages and subsistence after the date of their discharge, that the crew was advised on May 30, 1949 of Milton's lack of authority to employ them, and that they were requested to leave the vessel at that time. (T. 31 & 32). The crew was paid for their services up until the date of their discharge.

The refusal to leave the vessel after their discharge was a tortious seizure of the vessel for which they insisted on additional wages and subsistance.

Even assuming the authority of Milton, the contract of hiring between him and the crew was verbal and for no specific time. Hence, it was terminable at will by either party.

The position of the respondent is sustained by the following case:

"**The Pakanoket,** (CCA 4th Cir. 1907) 156 Fed. 241—A verbal contract between the owner of a vessel and a marine engineer for the services of the latter, in which his wages were fixed at

> a stated sum per month, but without any specified term of employment, constituted a hiring at will, and not by the month, and, in the absence of any established usage to the contrary, either party had the right to terminate the employment at any time without notice, and upon the employee's discharge, he was entitled to wages only to the time of such discharge.'
>
> See also **The Rescue,** Pa. D. C. 1902, 116 Fed. 380; **The Pacific,** 18 Fed. 703.

As was stated by the Court of Appeals below in its opinion (T. 32):

> "Furthermore, they have received payment for services up until the date of discharge. We know of no rule in Admiralty law which entitles them to more." (Citing **The Pakanoket** and **The Rescue,** Supra)

It is therefore respectfully submitted that this case is not a proper one for review for certiorari in this Court and that the Petition for a Writ of Certiorari should be denied.

JOHN P. BOOTH,
FRANK J. O'CONNOR,
Counsel for the Respondent.

By Frank J. O'Connor
Frank J. O'Connor